



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04409

Appearances

For Government: Eric Borgstrom, Department Counsel
For Applicant: *Pro se*

October 2, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) dated December 31, 2013, and April 14, 2008. (Government Exhibits 3 and 4.) On September 25, 2014, the Department of Defense (DoD), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended), issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why the DoD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on October 8, 2014, and elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on April 24, 2015. Applicant received the FORM on May 8, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant did not submit a response to the FORM. He later submitted two e-mail attachments, referred to as Applicant's Post-Hearing Exhibit A which were admitted

without objection. This case was assigned to the undersigned on July 6, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 40 years old, and unmarried. He has a high school diploma. He is employed with a defense contractor in a supervisory clerical position and is seeking to obtain a security clearance in connection with this employment.

The Government opposes Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

Applicant has a history of financial indebtedness. There are twenty-four delinquent debts set forth in the SOR that total almost \$27,000. Applicant admitted each of the allegations set forth under this guideline. He has been employed on a full time basis with his current employer since April 2001.

Credit reports of the Applicant dated January 30, 2015, and January 30, 2014, which include information from all three credit reporting agencies, reflect that he is indebted to each of the creditors set forth in the SOR, except for allegations 1(e), 1(u), 1(v), which he claims have been satisfied exclusively through involuntary wage garnishments. (Government Exhibits 6 and 7.) There is, however, no evidence in the record as to when these judgments were paid.

According to Applicant's answer to the SOR, Applicant became excessively indebted due to poor health. He states that he has been living paycheck to paycheck to handle his regular monthly expense, not considering any delinquent debts. He simply has not had the money to pay his delinquent debts and is struggling financially. (Government Exhibit 2.)

The following delinquent judgments remain owing: 1.a, a judgment for medical services filed against the Applicant in the amount of \$845; 1.b, a judgment for medical services filed against the Applicant in the amount of \$665; 1.c, a judgment filed against the Applicant in the amount of \$287; 1.d, a judgment filed against the Applicant in the amount of \$602; 1.e, a judgment filed against the Applicant in the amount of \$9,892; 1.f, a judgment filed against the Applicant in the amount of \$582; 1.g, A judgment filed against the Applicant in the amount of \$576; and 1.h, a judgment filed against the Applicant in the amount of \$545.

The following delinquent debts have been placed in collection and remain owing: 1.i, a debt owed to a creditor in the amount of \$1,002; 1.j, a debt owed to a creditor in the amount of \$458; 1.k, a delinquent debt owed to a creditor in the amount of \$67; 1.l, a delinquent debt owed to a creditor in the amount of \$3,160; 1.m, a debt owed to a creditor in the amount of \$36; 1.n, a debt owed to a creditor in the amount of \$33; 1.o, a debt owed to a creditor in the amount of \$300; 1.p, a debt owed to a creditor in the amount of \$60; 1.q, a delinquent debt in the amount of \$240; 1.r, a debt owed to a creditor in the amount of \$643; 1.s, a debt owed to a creditor in the amount of \$345; 1.t, a debt owed to a creditor in the amount of \$4,872; 1.u, a debt owed to a creditor in the amount of \$347; 1.v, a debt owed to a creditor in the amount of \$474; 1.w, a debt owed to a creditor in the amount of \$277; and 1.x, a debt owed to a creditor in the amount of \$885.

Information in the record reveals that Applicant suffers from diabetes, but he has failed to demonstrate how it has impacted his ability to pay his bills or meet his financial obligations. He states that he intends to pay his debts when he can afford to. He also states that it is not that he is unwilling to pay the debts in question, he simply does not have the money to do so. He believes that his debts were at times tied to events beyond his control. Applicant has had no financial counseling or debt consolidation services. He believes that he spends his money appropriately. (Government Exhibit 8.)

Applicant provided documentary evidence to show that a garnishment is currently in effect pertaining to allegation 1.b. (Applicant's Post-Hearing Exhibit A.) He provides no other evidence that any of the other delinquent debts listed in the SOR have been paid or are currently being paid. He provides no explanation with respect to the final disposition of these debts, nor any supporting documentation that any of them have been resolved. Applicant states that he has mulled over the idea of filing bankruptcy, but he has been trying his best to satisfy the debts without doing so. If left with no alternative, he states that he may file bankruptcy. At this point, without more, Applicant is still held responsible for the debts.

POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline F (Financial Considerations)

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern:

19.(a) inability or unwillingness to satisfy debts; and

19.(c) a history of not meeting financial obligations.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

a. The nature, extent, and seriousness of the conduct and surrounding circumstances;

b. The circumstances surrounding the conduct, to include knowledgeable participation;

c. The frequency and recency of the conduct;

d. The individual's age and maturity at the time of the conduct;

e. The extent to which participation is voluntary;

f. The presence or absence of rehabilitation and other permanent behavior changes;

g. The motivation for the conduct;

h. The potential for pressure, coercion, exploitation or duress; and

i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person

concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in instances of financial irresponsibility, which demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

The evidence shows that Applicant remains delinquently indebted to each of the creditors set forth in the SOR, except those debts set forth in 1.e., 1.u., and 1.v., which he claims were paid through involuntary garnishments. There is no evidence of any efforts to repay any other debts on his own, be it prior to or after receipt of the SOR. There is no evidence of even an attempt to pay the smallest of the debts, which is only \$36. In the absence of documentary evidence submitted in response to this FORM to show that Applicant has been able to attain some resolution on his delinquent debts and establish a track record of debt repayment, this concern must be decided against him in evaluating his suitability to have access to classified information.

Applicant’s history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability and poor judgment. Applicant failed to provide proof of payment, receipts, or any documentation to demonstrate that he has, can, or

will resolve his delinquent debts. There is nothing in the record to show that Applicant can live within his means. Without more, the Applicant has failed to establish that he is fiscally responsible. Furthermore, there is no evidence that he has received credit counseling to help him set a budget and learn to live within it, or that his finances are under control.

Under the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. He has obviously lived beyond his means for some time and now cannot afford to pay his delinquent debts. He has not sufficiently addressed the delinquent debts in the SOR, and does not have a concrete understanding of his financial responsibilities. Thus, it cannot be said that he has made a good-faith effort to resolve his past due indebtedness. He has not shown that he is or has been reasonably, responsibly or prudently addressing his financial situation. Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. His debts are significant. Assuming that he demonstrates a history and pattern of fiscal responsibility, including the fact he has not acquired any new debt that he is unable to pay, he may be eligible for a security clearance sometime in the future. However, he is not eligible now. Considering all of the evidence, Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; and 19.(c) *a history of not meeting financial obligations*, apply. There is no evidence in the record to show that Applicant has done anything to resolve his debts. In fact, from what is presented, Applicant could benefit from intense financial counseling. In this case, none of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth above, when viewed under all of the guidelines as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented. It does not mitigate the negative effects of his history of financial indebtedness and the effects that it can have on his ability to safeguard classified information. On balance, it is concluded that Applicant has not overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:		Against the Applicant.
Subpara.	1.a.	Against the Applicant.
Subpara.	1.b.	Against the Applicant.
Subpara.	1.c.	Against the Applicant.
Subpara.	1.d.	Against the Applicant.
Subpara.	1.e.	Against the Applicant.
Subpara.	1.f.	Against the Applicant.
Subpara.	1.g.	Against the Applicant.
Subpara.	1.h.	Against the Applicant.
Subpara.	1.i.	Against the Applicant.
Subpara.	1.j.	Against the Applicant.
Subpara.	1.k.	Against the Applicant.
Subparas.	1.l.	Against the Applicant.
Subpara.	1.m.	Against the Applicant.
Subparas.	1.n.	Against the Applicant.
Subpara.	1.o.	Against the Applicant.
Subpara.	1.p.	Against the Applicant.
Subparas.	1.q.	Against the Applicant.
Subpara.	1.r.	Against the Applicant.
Subpara.	1.s.	Against the Applicant.
Subparas.	1.t.	Against the Applicant.
Subpara.	1.u.	Against the Applicant.
Subparas.	1.v.	Against the Applicant.
Subpara.	1.w.	Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge

